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**Superior Court of Washington  
County of King Juvenile Court**

Dependency of:

CARTER, ELLEN  
dob: 04/23/2013

CARTER, SPENCER  
dob: 12/31/2009  
Minor Children.

No: 18-7-01689-2 KNT  
18-7-01688-4 KNT

**Order Dismissing Dependency Petition as to  
mother, Megan Carter  
(OROD)**

☐ Agreed as to ☐ mother ☐ father ☐ other  
☒ Contested as to ☒ mother ☐ father ☐ other  
☐ Default as to ☐ mother ☐ father ☐ other  
☒ Dismissed (**ORDYMT**) 4.1  
☐ Disposition Order (ORDD) Included

**CLERK'S ACTION REQUIRED:**

Paragraphs 4.1, 4.3, 4.6 (EDL), 4.15, and the boxes below.

The court will hear ☐ disposition ☐ initial progress review ☐ interim review ☐ dependency review ☐ permanency planning ☐ \_\_\_\_\_ (type of hearing) on (date) \_\_\_\_\_, at \_\_\_\_\_ a.m./p.m. at: King County Superior Court, Room/Department: \_\_\_\_\_, located at:  
☐ King County Courthouse, 516 Third Avenue, Rm. E-201, Seattle, Washington 98104  
☐ Regional Justice Center, 401 Fourth Avenue North, Kent, Washington 98032

**Additional clerk's action required: Enter the code(s) that apply.**

*About today's hearing:*

Was adequate and timely notice given to the children's caregiver? Yes (CGATN) ☒ No (CGNATN) ☐

Did the court receive a caregiver report? Yes (CGRR) ☐ / No ☒

☐ The caregiver appeared. Did the court give the caregiver an opportunity to be heard? Yes ☒ / No ☐

## **I. Hearing**

- 1.1 **Petition:** A petition was filed by DSHS alleging that the above-named children are dependent, and the court held a contested fact-finding trial on April 15, 16, 17, 23, 24, 25, and May 7, 8, 13, 14, 15, 16, 21, 28, and 29, 2019.
- 1.2 The following parties appeared - the Department of Children, Youth, and Families (DCYF), represented by Assistant Attorney General Laura Baird<sup>1</sup>, CASA GAL Virginia Whalen represented by Cristopher Jones, the mother, Megan Carter, represented by Adam Shapiro and the Father, Russell Andrew (Andy) Carter represented by Linda Lillevik<sup>2</sup>.
- 1.3 The court heard testimony from: the father, Russell "Andy" Carter; the mother, Megan Carter; Dr. Elizabeth Woods; Dr. Karen Nilsen; Dr. Carole Jenny; Dr. Richard Boles; Dr. Meta Lee; Dr. James Bennet; Jodi Gragg; Detective William Muse; GAL Virginia Whalen; paternal grandmother, Ruth Carter; Satina Nepesa; John Gese; Jamie Vanden Brink; Diane Penoyer-Hanratty; and Deirdre Bagocki.
- 1.4 In addition to the testimony presented, the Court has reviewed the exhibits admitted at trial.

## **II. Findings**

Except where otherwise indicated, the following facts have been established by a preponderance of evidence:

- 2.2 **Child's Indian Status:** On May 23, 2018, the Court asked each participant on the record whether the participant knows or has reason to know the child is an Indian child. Father and mother testified at that time that the child is not an Indian child as defined in RCW 13.38.040 and 25 U.S.C. § 1903(4). The petitioner has made a good faith effort to determine whether the child is an Indian child.

<sup>1</sup> DCYF worker Sara Miller appeared intermittently throughout the trial and was not called to testify.

<sup>2</sup> Father and his counsel were initially present during the father's testimony and were excused on 04/16/19 upon conclusion of his testimony. Afterwards, on occasions, father was present in the courtroom.

- 2.3 Megan Carter and Russell Carter are the biological parents of Spencer Carter (DOB 12/31/2009) and Ellen Carter (DOB 4/23/2013). The parents are married. Paternity is not an issue.
- 2.4 This dependency trial was as to the mother only. The father, Russell “Andy” Carter entered an agreed order of dependency on April 15, 2019. The order was amended and signed by this court on May 29, 2019.
- 2.5 The State filed a Petition for Dependency under these cause numbers on May 11, 2018. The petition alleged that Megan Carter committed medical abuse against her children, Spencer and Ellen Carter.
- 2.6 As to Spencer, the Dependency Petition alleges his dependency under prongs (b) and (c) of RCW 13.34.030(6) as follows: *(b) the child is abused or neglected as defined in chapter 26.44. RCW, and (c) the child has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child’s psychological or physical development.* The petition alleged that Spencer has been the subject of a dependency action between March and November 2011 “*due to concerns of medical abuse by the mother; specifically, that the mother was obtaining medical care, including procedures and surgeries, for the child who was about 2 years old.*” The remaining factual allegations in the Petition are mainly based on the reports made in March and May 2018 regarding Ellen Carter. Spencer Carter was 8 years-old when the Dependency Petition was filed. He is currently 9 years old.
- 2.7 During the trial, evidence was presented and admitted by agreement of the parties that the 2011 Dependency case involving Spencer was dismissed by the Department of Social and Health Services and that a final administrative determination was also made that the allegations of abuse were “unfounded.” The dismissal order and unfounded determination were entered in this case as Exhibit 323 by agreement of the parties.
- 2.8 At trial, allegations were raised by the mother that the DCYF had distributed medical and other case records to its witnesses in violation of RCW 26.44.031. DCYF, through counsel acknowledged that the records regarding the 2011 case which was “unfounded” and also dismissed by the Court were in fact distributed by DCYF. This Court finds that DCYF distributed the records pertaining to Spencer’s prior dependency case which was more than 7 years prior in violation of RCW 26.44.031.
- 2.9 At trial, there was little evidence presented regarding Spencer. The trial testimony from Spencer’s pediatrician, Dr. Meta Lee, established that she had diagnosed Spencer with ADHD, that Spencer also has a diagnosis of Autism Spectrum Disorder, which was diagnosed by a specialist, and that he had allergies and was currently undergoing further testing to determine whether his allergies still persist. Satina Nepesa, a Speech and Language Pathologist, testified about Spencer’s educational issues, and the development of his Individual Educational Plan (IEP), as well as the educational support services that he receives. Ms. Nepesa testified that the IEP was the result of a team decision-making and

based on objective evaluations from Spencer's educators. Ms. Nepsa testified that while the mother participated in the IEP meetings, her participation and input was not the basis for the determinations and the recommendations contained in Spencer's IEP. Ms. Nepsa testified that the mother has always been cooperative and supportive of Spencer's IEP and educational support services recommended.

- 2.10 DCYF presented Exhibit 427 as evidence of medical abuse committed by the mother. This exhibit contains Swedish Hospital medical records from February and April 2012. This record indicates concerns were raised at the time between Dr. Uma Pisharody and Dr. Bruce Oriel regarding mother's reports about Spencer's gastrointestinal issues.
- 2.11 Spencer's additional medical records and lab tests in Exhibits 272 and 273 showed that while Dr. Pisharody and Dr. Oriel were concerned about the mother's representations to them about Spencer's claimed pancreatic insufficiency, the lab tests showed that Spencer in fact had a "*severe exocrine pancreatic insufficiency*". The lab test results of February 4, 2012 and August 28, 2012 were contained in Exhibits 272 and 273.
- 2.12 The Court Appointed Special Advocate, Virginia Whalen, acknowledged in her testimony that Spencer has an ADHD diagnosis but she testified that she believed the diagnosis of autism needed to be further investigated. The Court does not find a basis for Ms. Whalen's recommendation. While Ms. Whalen is the appointed CASA on this case, she did not testify as a mental health provider and was not introduced or qualified as a mental health expert in order to opine as to the diagnosis made by a specialist. There was no other evidence submitted to support Ms. Whalen's recommendation. While this matter has been pending for one year, neither Ms. Whalen nor the previous appointed CASA requested a re-testing of Spencer during the pendency of this matter.
- 2.13 This Court finds that there was virtually no credible evidence presented at trial regarding allegations of current medical abuse, any other abuse or neglect committed by the mother against Spencer Carter.
- 2.14 At trial DCYF acknowledged that it was not presenting evidence or arguing that Spencer was a victim of any current abuse or neglect by the mother. However, DCYF's position was that based on the allegations related to his sister, Ellen, DCYF would argue that Spencer should also be found dependent.
- 2.15 Regarding Ellen Carter, the Dependency Petition alleged her dependency under prongs (b) and (c) of RCW 13.34.030(6) as follows: *(b) the child is abused or neglected as defined in chapter 26.44. RCW, and (c) the child has no parent, guardian or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development.* The factual allegations included that there were concerns for possible intentional harm to Ellen by her mother, Megan Carter, and that the mother had committed medical abuse against Ellen in May 2018 by withholding and wasting Lovenox, an anticoagulant medication, while Ellie was receiving treatment at Mary Bridge Hospital in Tacoma, WA. The Petition

alleged that Megan Carter's acts of wasting the medication had been caught on video tape. The petition also alleged that reports had been received from a relative alleging that Megan Carter had been the victim of medical abuse as a child, had made factitious medical complaints as an adult and benefitted from secondary gain from Ellen's medical condition.

- 2.16 The evidence established that Ellen Carter was born very premature at 24 weeks' gestation with a birth weight of 15 ounces. She spent over 4 months in the Neonatal Intensive Care Unit after her birth.
- 2.17 It is uncontested that Ellen suffered a number of significant medical issues due to prematurity, including necrotizing enterocolitis, chronic lung disease, two ventricular hemorrhages, adrenal issues, and chronic kidney disease. Dr. Jenny acknowledged these issues could affect Ellen's development.
- 2.18 It was clear from the testimony of the mother's witnesses, and the testimony of the parents as well as medical professionals who know Ellen and Spencer that the children are bonded with their mother. This was not contested by the GAL or DCYF.
- 2.19 The mother testified that she provided almost all of Spencer's and Ellen's medical care until they were removed from her care in May 2018.
- 2.20 The mother testified that she is a nurse by profession but that she stopped working after the birth of Spencer and has not renewed her license.
- 2.21 The father testified that the mother provided almost all of Spencer's and Ellen's medical care prior to their removal from the mother's care in May 2018 and that she took the children to almost all of their medical appointments. He testified that Ellen would sometimes have 1-2 appointments a week. He testified that he worked full time while the mother stayed home with the children. He testified that he attended some of the medical appointments and the ones that he did not attend, mother would keep him updated. Father did not have concern of abuse by the mother.
- 2.22 Other family members testified regarding the mother's care of the children. The father has a bonded family with Sunday dinners at his parents and family vacations with extended family members. Several family members testified that they spent time with Ellen and observed mother's interactions with the children; none testified as to any concerns regarding the mother.
- 2.23 The medical records show that Ellen Carter was admitted to the Mary Bridge Hospital in March 2018 due to an infection in her central line. She was diagnosed with sepsis and had multi-organ failure.
- 2.24 This dependency investigation was initiated pursuant to an intake, during the March hospitalization, called in by a hospital social worker at the request of a doctor other than Dr. Elizabeth Woods. Exhibit 98.

- 2.25 Dr. Woods received a request to review the medical records by a social worker *"due to social concerns during recent admission for fever/possible line infection/bacteremia/sepsis in chronic medically complex well known patient to Mb."* Dr. Woods notes dated 2/5/18 state: *"No evidence of concern on review of notes from multiple consultants and hospitalist providing care."* Exhibit 158.
- 2.26 Dr. Woods is employed at Mary Bridge Children's Hospital as the Medical Director of the Children's Abuse Intervention Department (CAID). She testified that she performed a review of Ellen's medical record and consulted with some of Ellen's medical subspecialists. She testified that, based on her review of the record and consultations, she formed the opinion that Ellen was the victim of medical child abuse.
- 2.27 Dr. Woods noted on April 3, 2018, referred to *"concerns from multiple entities that Ellie has had multiple unexplained illnesses"* and that *"[t]here has been heightened concern over many months that Ellie's known illnesses are providing secondary gain to mother of child and concern that there may be some source of deception involved."* Exhibit 91. Dr. Woods in her testimony did not identify the *"multiple entities"* and did not explain the basis for these concerns *"over many months"* or what these *"heightened concerns"* were. The record presented only indicated that one note was written to CPS on March 30, 2018 (see below). There are no other medical records (except the social worker requesting review in February – See §2.25) showing concerns or notes to CPS. In her notes, Dr. Woods noted that *"Mom asked for information regarding who made the CPS referral when I was speaking with her. I told her that referrals are anonymous but I do know that concern came across from multiple entities and it was not a specific individual."* Dr. Woods' testimony was as vague as her answer to the mother. Furthermore, Dr. Woods in her testimony did not give the basis for the allegation of *"secondary gain"* against the mother or the basis for the allegation that there was *"concern for some source of deception by the mother"*. The Court finds that most of Dr. Woods' testimony were conclusory and without supporting factual basis. It is also concerning that Dr. Woods testified as to the protocol among doctors of not documenting concerns of medical abuse in the patients' files. Dr. Woods testified that the medical providers who suspect medical abuse would in fact "not document" their concerns in the patients' medical files because such files were accessible to the patients. The medical records that CASA submitted in Exhibit 427 from Swedish contradicted Dr. Woods' testimony on this same exact point. Exhibit 427 shows that the doctors documented their suspicions and concerns regarding medical abuse together with the basis for such concerns in Spencer's file. How else would medical providers be alerted to such concerns by their fellow colleagues regarding a mutual patient? The records and testimony presented clearly show that the patients' medical file is the shared document that all health-related information is kept; it is the document that is updated by all medical providers who have contact with the patient. The Court does not find Dr. Woods' testimony regarding doctors' lack of recording persuasive.

- 2.28 There was a note admitted in the record as Exhibit 98 which documents a referral to CPS made by Barbara Guerrero, a social worker who reported “*concerns of mother’s capacity to care for this child.*” This note was generated on March 30, 2018 only a few days after Ellen’s admission to Mary Bridge Children’s Hospital for an infection later diagnosed as sepsis. There is no explanation or details provided in this note about the nature of the concerns raised about the mother. Barbara Guerrero did not testify at trial. It is assumed the call was made due to Ellen’s serious condition at the time. However, no evidence was submitted during the trial to explain the reason why Ellen suffered from sepsis. Dr. Jenny testified that she could not determine the cause of Ellen’s sepsis. There is insufficient evidence for this Court to find that the mother bore any responsibility for Ellen’s sepsis. The note from Barbara Guerrero does not corroborate medical abuse by the mother.
- 2.29 Dr. Woods testified that the maternal grandfather sent a letter to the Mary Bridge Children’s Hospital expressing concern over the mother’s history of medical child abuse. A copy of this letter was not produced during the trial and the mother did not contest that the letter was received by the hospital. Dr. Woods further testified that upon review of the letter, she concluded that the maternal grandfather had not had contact with the family for many years and that the allegations in the letter were not credible. She testified that she had not given weight to the letter and had not spoken with the maternal grandfather. This letter, however was brought up at the CAID meeting and Ellen’s medical providers at the meeting were notified of the allegations in the letter.
- 2.30 Testimony established that the hospital held two CAID conference meetings to discuss Ellen’s medical case in 2018.
- 2.31 The initial CAID meeting in 2018 discussed concerns about the mother’s secondary gain and involvement in Ellen’s medical care. At that meeting, it was decided to remove the mother from Ellen’s medical care.
- 2.32 Mary Bridge Children’s Hospital physicians decided to place Ellen and the mother in a videotaped room with 1:1 room-monitors. The purpose of the room-monitors was to monitor mother’s behavior towards Ellen and mother’s manipulation of Ellen’s lines, drains and medical care. Exhibit 61.
- 2.33 Subsequently, the medical staff asked permission from Dr. Nilsen to ask the mother to administer Ellen’s anticoagulant medication. Dr. Nilsen authorized it as the injections were uncomfortable for Ellen to receive. The mother testified that she was also allowed to provide wound care for Ellen.
- 2.34 After the mother was removed from Ellen’s care, the mother did not approach the hospital staff to ask permission to administer the anticoagulation medication or to be actively and directly involved with Ellen’s care. *She did not seek permission, it was the hospital staff who asked the mother to help them with the injections.*

- 2.35 At the time that Dr. Nilsen granted the request from the hospital staff and authorized the mother to administer the anticoagulation medication by injections, she was aware of the allegations against the mother.
- 2.36 On May 6, 2019, the child developed a blood clot and the diagnosis was confirmed by test results on the morning of May 7<sup>th</sup>. Exhibits 211, 212.
- 2.37 Jodi Gragg was the In-patient Nurse Director at Mary Bridge Hospital during Ellen's admission to the hospital in March through May 2018. Nurse Gragg testified that when on the morning of May 7, 2018, she came to Ellen's hospital room and told the mother that the test results showed that Ellen had developed blood clots and that she would be moved to PICU, the mother's reaction appeared "jovial" to her. Based on her previous interactions with the mother, Nurse Gragg found this to be a strange reaction.
- 2.38 The Court heard the testimony of the mother that by the time that Nurse Gragg came to the room, Ellen had been in the hospital for a number of weeks and that she had been hoping that Ellen would be released from the hospital soon. Mother testified that she had expressed her desire for Ellen to be discharged as soon as possible to Dr. Nilsen. Exhibit 218.
- 2.39 Mother further testified that she had been the one who had noticed the swelling and the redness in Ellen's chest area on May 6<sup>th</sup> and had brought it to the attention of the medical staff. Although at that time, there were room-monitors in Ellen's room and there were nurses checking on Ellen, none of them had noticed the swelling.
- 2.40 Mother testified that during the night Ellen went through a number of diagnostic procedures and that she had been up all night with her. Mother testified that by the time Nurse Gragg came to the room, she was exhausted, frustrated, and upset. She testified that she was relieved that they had finally found out what had caused the swelling and the redness but that at the same time she was having a difficult time with the fact that Ellen was being returned to the PICU. She testified that she was not happy about Ellen's condition and in fact was quite upset.
- 2.41 Nurse Gragg testified that she began to question why Ellen would develop a clot while on anticoagulant medication, and she testified that she realized that it was the only medical care that the mother was allowed to provide.
- 2.42 This court finds that Ms. Graag's perception or reading of the mother's reaction did not establish that the mother was happy about Ellen's condition on the morning of May 7, 2018. The record established that the night of May 6<sup>th</sup> to the morning of May 7<sup>th</sup> was a difficult time for Ellen and her mother. Ellen was going through a number of diagnostic tests and their sleep was interrupted throughout the night. After a long night, mother, for the first time, heard from Nurse Gragg that Ellen had in fact developed blood clots and was being moved to PICU. It is plausible that by the time Nurse Gragg came to the room, mother was tired and experiencing a number of different emotions. Nurse Gragg did not



testify that the mother said anything to show that she was “pleased” or “delighted” at the news of the blood clot. In fact, Nurse Gragg only based her perception of the mother’s emotion on a passing reaction that she believed she saw and nothing else. There is no evidence to support that Nurse Gragg’s perception of what she believed mother’s reaction was on the morning of May 7<sup>th</sup> is in fact accurate. Nurse Gragg’s perception of a passing reaction does not corroborate the allegations of medical abuse nor that the mother was receiving secondary gain from Ellen’s illness.

- 2.43 Dr. Nilsen testified that at the request of Nurse Gragg, she identified in the medical record times that the mother could have been administering anticoagulant medication to Ellen. Based on that review, she identified 5-10 frames of security footage.
- 2.44 Nurse Gragg testified that she first looked at the videos in the security office and identified two periods of time where it appeared to her that the full dose of anticoagulant medication was not given to Ellen.
- 2.45 Dr. Woods testified that the police were called after staff reviewed the surveillance footage. Detective Muse testified that a responding officer placed Ellen in protective custody. Mary Bridge Children’s Hospital issued a no-trespass order against the mother ordering her removed from the premises, and that no-trespass order was still in effect at the time of the fact-finding trial in these matters.
- 2.46 The Court heard testimony that Ellen was on varying doses of anticoagulant medication while in the mother’s care, and this is reflected in the medical records. Exhibit 161.
- 2.47 At trial DCYF presented the testimony of Detective Muse, Dr. Woods, Dr. Nilsen and Jodi Gragg pertaining to the allegations of the mother wasting Lovenox in the hospital. The videos of the alleged incidents were viewed during the testimony of Detective Muse, Dr. Nilsen and the mother. DCYF alleged that the mother disposed/wasted Lovenox when she pointed the syringe downward after appearing to administer the medication to Ellen, pushing down on the syringe plunger, and expelling the medication into the hospital bed sheets. The videos were admitted as exhibits 162, 163 and 283.
- 2.48 Nurse Gragg testified that Mary Bridge Hospital uses two type of syringes: Vanish Point syringes and BD Safety Glide syringes. She testified that the syringe used to administer Lovenox to Ellen was a BD Safety Glide, which has a distinct solid grey cap and white safety apparatus on the side. Ms. Gragg testified that Vanish Point syringes have a retractable needle but that to her knowledge, as a rule, these syringes were not provided to the mother to administer Lovenox to Ellie. Both syringes were demonstrated as to how they each worked. Dr. Woods, Dr. Jenny, Dr. Nilsen and Virginia Whalen all testified that they did not know which syringe was used by Megan Carter to administer Lovenox to Ellen.
- 2.49 The evidence established that the Lovenox syringes were pre-loaded with the medication at the hospital pharmacy and that a nurse would hand deliver the syringe to the mother while another staff observed and entered the information in the patient’s medical file.

- 2.50 The evidence and the videos of May 4<sup>th</sup> and May 6<sup>th</sup> established that neither Nurse Gragg, Dr. Nilsen, Dr. Woods nor Dr. Jenny were present in the hospital room at the time the nurses handed the syringes to the mother to administer the Lovenox to Ellen. On both occasions, there were other nurses and room-monitors present. DCYF did not present any testimony from the nurses who handed the syringe to the mother or the nurses and room-monitors who were present at the time.
- 2.51 Mother testified that she was given and used the Vanish Point syringe to administer the Lovenox on both occasions. Mother demonstrated how she used the Vanish Point syringe. She also testified that she administered the Lovenox to Ellen's port slowly – as it would cause a burning sensation. She testified that each time after the administration of the Lovenox, she would take the syringe out of the port and push down on the syringe to retract the needle before capping it for safety purposes and handing the syringe to the nurse. Mother testified that she administered the full dose of medication to Ellen and that she did not push down on the plunger to expel, dispose or waste any medication, but simply to retract the needle. The Court has viewed the videos for both occasions and finds the mother's explanation to be consistent with the images on the videos.
- 2.52 This Court watched the videos in exhibits 162, 163 and 283 carefully. BD Safety Glide and Vanish Point Syringes were both displayed and admitted as evidence. The syringes are quite distinct in appearance. The BD Safety Glide syringe has a solid, grey cap and a white safety device on its side. The Vanish Point syringe has a clear cap and no safety device on its side. The video images do not show the BD Safety Glide syringe being used by the mother in administering the Lovenox to Ellen. The images are consistent with the appearance of the Vanish Point syringe being used by the mother. The Vanish Point syringe requires a push down on the syringe plunger after administering the medication in order to retract the needle before capping the syringe. This is consistent with the mother's testimony on how she administered the medication to Ellen.
- 2.53 DCYS admitted exhibits 3, 4, 6, 8, 12, 29, 33, 38, 42, 45 which document medical abuse as a concern or problem list for Ellen. These records were generated after May 9, 2018 and subsequent to Dr. Woods, Dr. Nilsen and Nurse Gragg suspecting that the mother had disposed/wasted Ellen's Lovenox instead of administering it to her. Dr. Nilsen testified that after reviewing the videos, she contacted Ellen's care providers to disclose the abuse that she believed she had observed on the videos and to discuss and re-think Ellen's medical care. This Court finds that the mention of medical abuse in these exhibits were generated under the mistaken suspicion that the mother had disposed/wasted Ellen's medication on May 4<sup>th</sup> and May 6<sup>th</sup> and does not corroborate actual medical abuse by the mother.
- 2.54 It is clear from the videos that at least two hospital staff were present in the room with the mother and Ellen at the time the mother administered the Lovenox, including nurses and a room-monitor specifically tasked to watch the mother's behavior towards Ellen. These people were in close proximity to the mother and Ellen at the time the Lovenox was

administered. DCYF did not present any evidence that any of the nurses or the room-monitors had any concern that the mother had not administered the Lovenox as she was supposed to.

- 2.55 Most importantly for the Court is Dr. Nilsen's testimony during her direct examination by Ms. Baird regarding the videos. Dr. Nilsen viewed videos of the mother administering the Lovenox to Ellen on both dates in Exhibits 162 and 163. Dr. Nilsen testified that she did not see anything of concern as to how the mother administered the Lovenox to Ellen. The Court gives great weight to Dr. Nilsen's testimony on this point. Dr. Nilsen had spent hours on reviewing the videotapes in this case. She has been the doctor overseeing Ellen's care, knows the family and is also fully aware of the allegations against the mother. She is the one who authorized the mother to administer the Lovenox. She testified that the mother did not do anything wrong in either occasion when administering the Lovenox.
- 2.56 Ellen developed a blood clot on May 6<sup>th</sup> with a confirmed diagnosis on May 7, 2018. This was not the first or the only time that Ellen had developed blood clots. DCYF presented evidence about fluctuating Lovenox levels in Exhibits 10 and 11. DCYF argues that the blood clot establishes that the mother did not administer the Lovenox to Ellen as alleged.
- 2.57 DCYF admitted evidence to show that the levels of Lovenox had fluctuated while Ellen was in hospital in March – May 2018. However, the evidence established that Ellen had suffered three prior blood clots earlier during the hospitalization when Ellen was in the Pediatric Intensive Care Unit (PICU). Mother was not administering any of Ellen's medication in PICU. All of Ellen's care was done by the nursing staff. Exhibit 317. Mother testified that Ellen had a prior blood clot in August 2017.
- 2.58 The Court also heard the testimony from Dr. Nilsen that there are "*many things*" which can impact Lovenox levels in the blood, including the nature of the child's illness at the time, diet, child's inflammatory state, and other medications that the child is taking at the time. Dr. Nilsen further testified that the reason for differing Lovenox levels cannot be determined.
- 2.59 Dr. Richard Boles testified that Ellen's blood clots did not establish medical child abuse against the mother. He testified that there were a large number of factors involved in "*clotting*" which varies among people and also varies within any one person at any given time. Dr. Boles testified that clotting is very common in patients who have a constellation of conditions and symptoms, such as Ellen. Dr. Boles testified that the fact that Ellen has not had blood clots since the mother was removed from Ellen's medical care is due to the fact that Ellen's central line was removed as well as to the varied causes for clotting.
- 2.60 Dr. Boles and Dr. Nilsen both testified that Ellen's central line created a heightened risk factor for infection and clotting. The Court finds that there are many conflicting facts that may have caused the fluctuations in Lovenox levels in Ellen's blood or the blood clot of May 7<sup>th</sup>. The Court notes that while DCYF presented evidence of the fluctuating levels of Lovenox in Ellen's blood, it did not establish that this was the cause of Ellen's blood clot

diagnosed on May 7, 2018 nor that the mother was responsible for the fluctuating levels. The Court finds that there are independent and plausible reasons for Ellen's fluctuations in the Lovenox levels or the blood clot diagnosed on May 7<sup>th</sup>. The exhibits presented by DCYF do not demonstrate what the levels were on May 4<sup>th</sup> or May 6<sup>th</sup> when DCYF alleges that the mother did not administer the medication or on May 7<sup>th</sup> when the Ellen's blood clot was diagnosed. The Court does not find that the fluctuations in Ellen's Lovenox levels or the blood clot diagnosed on May 7<sup>th</sup> establish the allegation that the mother disposed of or wasted Lovenox instead of administering it to Ellen. The evidence presented by DCYF about Lovenox levels or the blood clot of May 7<sup>th</sup> do not corroborate nor establish medical child abuse by the mother.

- 2.61 Testimony was presented from Dr. Woods and Dr. Jenny that the mother had been the victim of medical child abuse, which they stated was a risk factor for perpetrating abuse. Neither Dr. Woods, Dr. Jenny or any of the witnesses presented at trial investigated this allegation and no evidence was presented about what abuse the mother suffered. An expert's opinion must be supported by credible evidence. The Court did not hear what evidence the doctors had used to opine that the mother "*was a victim of medical child abuse herself*". No evidence was presented to show what, when or how the mother had been a victim. There was no evidence presented at trial to establish that the mother was a victim of medical abuse. Without any factual basis to support the opinion of Dr. Woods and Dr. Jenny on this point, the Court is not convinced that the opinion is in fact accurate.
- 2.62 The Dependency Petition alleges that the mother made factitious medical complaints as an adult, neither DCYF nor CASA presented any evidence to corroborate this allegation. As to the mother's medical issues, the Court heard testimony from Dr. Boles who testified that he reviewed some of the mother's medical records and found that she suffered from medical conditions including hypersensitivity to pain, lupus, chronic fatigue and decreased bladder sensitivity. Exhibit 203 There were no evidence submitted at trial to show that the mother had made any factitious medical complaints as an adult.
- 2.63 The Dependency Petition alleges that the mother benefitted from secondary gain associated with Ellen's illness. The evidence presented at trial established that Ellen lost her "Shermie" doll while in the hospital and that the mother placed a message on her Facebook page asking for people to keep an eye out for the doll. Exhibit 206 demonstrates that the hospital staff initiated the tweet to Richard Sherman, and not the mother. When Richard Sherman answered the hospital's tweet and subsequently came to the hospital, it was a major event for the hospital. Many of the hospital staff were present for the Richard Sherman's visit together with Ellen and her family. There was no evidence presented that the mother had initiated Sherman's visit to the hospital or that the mother received special attention. Richard Sherman's visit to the hospital was a major event for the hospital and arranged by the hospital.
- 2.64 There was evidence presented that Ellen's image was used by the hospital for the publicity of the Mary Bridge Hospital's charity event and for the hospital's internal staff publication. There was no evidence that the mother initiated the use of Ellen's image for either of these

uses. Mother testified that the hospital asked permission to use Ellen's image for the charity event's brochure and that the hospital requested that the family provide them with a few family photos. Mother testified that she gave permission for the use of Ellen's photo on the brochure and also provided the family photos. Mother testified that she was not aware that the hospital had used Ellen's image on an internal staff publication. Dr. Woods testified that a "*secondary gain benefit*" could be the "*attention*" that one tries to get for the child's illness or condition. However, apart from the Richard Sherman visit and Ellen's images appearing at the hospital's publication, there were no other credible evidence showing that the mother "*gained secondary benefit*" from Ellen's illness. As to those two instances, the evidence established that it was the hospital staff and not the mother who initiated contact with Richard Sherman and approached the mother with the request to use Ellen's image on the hospital's charity brochure and publication. If there were any benefit gained from Ellen's status as a patient or from her image, the benefit was gained by the hospital and not by the mother. There was no evidence presented that the mother gained any benefit from Ellen's illness.

- 2.65 This Court finds that the evidence presented at trial by DCYF and the CASA failed to corroborate or prove by a preponderance of the evidence that Megan Carter committed medical abuse against Ellen Carter as alleged in the Dependency Petition.
- 2.66 In addition to the allegations in the Petition, DCYF made a number of additional claims that the mother committed acts of medical abuse against Ellen which were not alleged in the Dependency Petition. DCYF alleged that the mother exaggerated Ellen's health condition to medical care providers which resulted in Ellen receiving unnecessary medical care including oxygen, medication, tests, and surgeries. However, this Court finds that DCYF and the CASA did not provide sufficient evidence to corroborate such claims and did not prove them by a preponderance of the evidence.
- 2.67 Dr. Meta Lee has been Ellen's pediatrician since her release from the neonatal intensive care unit. Dr. Lee is the Medical Director at Valley Medical Center and Chief of Pediatrics. She testified that she was aware of the prior allegation of medical abuse against the mother regarding Spencer and was vigilant about that concern. On one occasion, Dr. Lee called Child Protective Services (CPS) when she learned that Spencer had injected some water into Ellen's feeding tube when the mother was flushing the tube. CPS investigated the incident and resolved it.
- 2.68 Dr. Lee testified that Ellen had legitimate medical issues from the time she began seeing her. These medical issues included difficulty feeding, intestinal dysmotility issues, she could not take-in enough calories to grow and failed to gain weight. In fact, a Feeding Evaluation was performed when Ellen was approximately 5 months old (soon after her release from the hospital) which corroborated her eating difficulties. The Feeding Evaluation was admitted as Exhibit 285. The Feeding Evaluation was not based only on the mother's reports, but on the testing and observation of the Feeding therapist.

- 2.69 Dr. Lee testified that she had over 80 appointments with Ellen and 35 with Spencer. Mother accompanied the children to most, if not all the visits. Dr. Lee testified that she examined the children regularly and opined that based on her experience and expertise, Ellen suffered from legitimate medical issues. She refuted that Ellen's medical conditions were based on exaggerated, false or misleading reports of the mother.
- 2.70 Dr. Lee reported that she made the referrals to the specialists that Ellen saw, that the specialists were competent physicians and that she was very picky about whom she referred her patients. Dr. Lee testified that she communicated regularly with these specialists, and reviewed all their reports. Dr. Lee testified that she had no concerns about the reasons for her referrals. Dr. Lee testified that she was in regular communications with the specialists, followed Ellen's medical conditions closely and never heard any concerns from Ellen's health care providers about concerns of abuse.
- 2.71 Dr. Lee testified that she participated in Care Conference in September 2017 where all providers attended. Dr. Lee questioned whether any of the providers had concerns of abuse, and none were raised. Dr. Woods did not attend that conference and no records or statements from any of the providers who attended that conference were offered into evidence to demonstrate that medical abuse as a concern was raised at that meeting. Dr. Woods' testimony that concerns were raised about medical abuse at that Care Conference is uncorroborated and not supported by the records in this case.
- 2.72 Dr. Lee testified that medical decisions were not made based on the mother's reports alone. Decisions were correlated with medical tests and physical examinations. Dr. Lee testified that doctors don't make decisions based on a parent's report alone. Dr. Lee testified that she did not find the mother to exaggerate or fabricate Ellen's conditions and found her to be appropriately concerned and following through with the recommendations as instructed by her and the specialists.
- 2.73 Dr. Woods and Dr. Jenny testified that the mother was responsible for Ellen having oxygen prescribed unnecessarily. The Court has reviewed the exhibits admitted in this case. Exhibit 266 demonstrate that Dr. Murphy, Pediatric Pulmonologist, prescribed the oxygen based on a number of factors including a physical examination of Ellen and an oxygen saturation test. DCYF's argument that Dr. Murphy prescribed oxygen for Ellen solely based on the mother's reports are not supported by the records. Dr. Murphy did not testify at trial; however, his reports and chart notes were admitted into evidence. In a letter dated 6/29/2018 (after mother was removed from the children's care) from Dr. Murphy, he noted the following about Ellen: *"There is no clear etiology for her lung disease other than the GERD and microaspiration. ... I am concerned that this is a basic metabolic issue like a mitochondrial process that is not working well enough."* The medical records admitted into evidence do not establish that Dr. Murphy or any other doctor recommended that Ellen be removed from the use of oxygen at any time prior to her hospitalization in March 2018, or that the mother exaggerated Ellen's symptoms to Dr. Murphy or that the mother did anything other than follow Dr. Murphy's recommendations. No evidence was presented at trial to demonstrate that at the time Dr.

Murphy prescribed oxygen for Ellen it was not medically necessary or helpful for Ellen. The medical records in Exhibits 267-268 and 270 demonstrate that Dr. Murphy examined Ellen and re-affirmed his prescription for oxygen and did not recommend terminating Ellen's use of oxygen - even at the visit a few days before Ellen was admitted into the hospital in March 2018. There is no evidence presented that Dr. Murphy's medical decisions were medically inappropriate at the time or that he had not exercised his medical judgment in treating his patient, Ellen.

- 2.74 The Court finds that the prescription of oxygen for Ellen was not the result of medical abuse perpetrated by Megan Carter.
- 2.75 DCYF position also infers that Dr. Murphy did not exercise his independent medical expertise and judgment in making his prescription, which is also unsubstantiated.
- 2.76 In May 2018, Ellen was removed from oxygen in the hospital. The coincidence that the removal of oxygen was after the mother was removed from Ellen's care does not – without more- corroborate medical abuse. There was no evidence produced at trial that Ellen did not need oxygen at the time it was prescribed; there was no evidence submitted that the mother's reports to Dr. Murphy were exaggerated or misleading, there was no evidence admitted to establish that Dr. Murphy did not consider information other than the mother's reports in deciding to prescribe oxygen and no evidence was admitted that Dr. Murphy did not exercise his own medical expertise and judgment in prescribing oxygen. There was no evidence admitted that the removal of oxygen was not simply because Ellen's health had improved. Also, there is no evidence that Dr. Murphy ever rescinded his prescription, doubted his diagnosis, or that another medical provider opined that the child should not have been prescribed oxygen. Dr. Murphy in his letter of 6/29/2018 noted and cautioned: *"Maintenance and good health with less therapy is evidence of improvement to me. The primary pulmonary issues we faced previously were oxygen dependency and no obvious explanation for that...However, given her history of extreme prematurity, it is likely that it will be of value to have on hand the tools we commonly do use for those problems such as Atrovent and Albuterol."* In his note, Dr. Murphy still recommends having Atrovent and Albuterol on hand for Ellen. The only logical inference from Dr. Murphy's note is that Ellen's proper breathing is still an issue to be dealt with caution and that she may yet need pulmonary help and medication for proper breathing.
- 2.77 The mother testified that Ellen was on oxygen until May 2018 per Dr. Murphy. DCYF did not produce testimony or credible evidence that Dr. Murphy's medical decision was in fact wrong. Dr. Lee who regularly saw Ellen did not testify that in her opinion Ellen did not need oxygen. There is no credible evidence on the basis of which the Court would second guess the medical decision of Dr. Murphy in prescribing oxygen to Ellen. Dr. Woods or Dr. Jenny's speculation that at some point in the past the child would not have benefitted from oxygen is a speculation at best. Ellen was born with many different medical complications and required many complicated procedures. She has grown to be an active child and as Dr. Lee testified, Ellen may have overcome many of her medical conditions

simply by growing out of them. Ellen is now 6 years old and in a much different situation health wise than when she was as a new born or a toddler. The Court does not find that there is credible evidence to believe that medical abuse was the cause of Ellen being prescribed oxygen or its continued use. The medical record established that Ellen had a medical need for the use of oxygen. The record also established that Ellen's health improved in the hospital to the point that she was able to keep her oxygen level at the proper level without the use of additional oxygen. Ellen's improvement after a prolonged illness does not establish medical abuse by the mother.

- 2.78 Dr. Woods and Dr. Jenny testified Ellen did not suffer from legitimate dysmotility in her gastrointestinal tract. They opined that Ellen's dysmotility issues and the resulting medical interventions were caused by false and exaggerated reports to the doctors by the mother. However, the Court finds that Ellen's dysmotility issues were in fact well documented in the medical records admitted in Exhibits 214, 216, 312, 313 and 318. Moreover, Dr. Lee and Dr. Nilsen both testified about Ellen's dysmotility and gastrointestinal issues. Dr. Lee testified that Ellen has suffered from dysmotility and gastrointestinal issues since birth.
- 2.79 No evidence was presented to corroborate the claims of DCYF and CASA that the mother exaggerated Ellen's feeding and gastrointestinal issues. Dr. Lee, Megan Carter, Andy Carter, Ruth Carter, Diedre Bagocki and Dianne Hanratty Penoyer all testified about Ellen's issues with oral feeding. Even after Ellen was removed from the mother's care, the weight chart presented by Dr. Jenny established that Ellen lost weight. Dr. Lee testified that in the last year Ellen has gained less than a pound.
- 2.80 The allegation that the mother starved Ellen was uncorroborated and not supported by the weight of the evidence and the testimony of witnesses at trial. Dr. Lee never had a concern that Ellen was being starved or intentionally malnourished. Testimony was presented by Megan Carter, Andy Carter, Ruth Carter, Deidre Bagocki, Diane Hanratty Penoyer, and John Gese that Megan would regularly offer food to Ellen, that Ellen had a seat at the family dinner table and food would be offered and placed in front of her. There was also testimony that Ellen would not often eat food orally, or eat very little. None of the witnesses who observed the mother and Ellen outside of the hospital or in the doctor's office ever witnessed the mother restrict Ellen from eating food. The Court heard testimony that mother always had snacks available for the children and that Ellen was offered food at meals and whenever she wanted it. Exhibit 276 showed photos of Ellen eating orally on a number of different occasions.
- 2.81 Dr. Woods' testimony that Ellen "wolfed down" a Happy Meal after the mother was removed from the hospital was not corroborated by the evidence. In light of the history of Ellen's eating habits, and testimony of other witnesses, Dr. Woods' testimony on this point, is not plausible. Dr. Nilsen testified that she did not witness Ellen consume a Happy Meal and had such an event occurred, she would have heard about it because it would have been a significant event. Ellen's alleged consumption of a Happy Meal was not corroborated by the medical records admitted at trial nor by the testimony of any other witness.



- 2.82 Even after the removal of the mother from Ellen's medical care, the evidence established that Ellen continues to have feeding issues. Ellen still has a G-tube installed a year after the mother's removal as her caretaker. Ellen continues to have feeding issues. Father and Ruth Carter (paternal grandmother) testified about the challenges of Ellen's oral intake. Father has been taking Ellen to a feeding therapist who is helping Ellen overcome her feeding issues. Dr. Lee testified that weight gain continues to be a significant challenge for Ellen.
- 2.83 The evidence did not establish that the installation of Ellen's G-tube was the result of false or exaggerated reports by the mother about Ellen's feeding or gastrointestinal symptoms. The medical records in Exhibits 265 and 267 establish that the decision to install the G-tube was made by Dr. Abdullah and supported by Dr. Murphy. There is no reason to believe that this recommendation was based on anything other than the doctors' expertise and sound medical judgement.
- 2.84 Dr. Pickens did not testify at trial. However, his records and those of Dr. Murphy establish that there were legitimate medical issues to support their recommendations to install a G-tube. The recommendation came from the doctors, not the mother. No credible evidence was presented to demonstrate that the information provided to the doctors by the mother about Ellen's symptoms were false or exaggerated. No credible evidence was presented that Ellen did not need the G-tube at the time it was recommended and installed. There is no plausible reason to believe that the recommendation for the G-tube was made based on anything other than the expertise and sound medical judgment of Dr. Pickens and Dr. Murphy. In fact, Ellen continues to have a G-tube over a year after the mother was removed from Ellen's medical care. The evidence presented at trial does not support the claim that medical abuse perpetrated by the mother was the reason for doctors' decision to install or maintain Ellen's G-tube.
- 2.85 Dr. Woods testified that the mother misrepresented information to doctors which resulted in Ellen going through an unnecessary G-J split surgery. Dr. Woods testified that Dr. Pickens sent Ellen for a motility study at the Seattle Children's Hospital prior to the decision to proceed with the G-J split surgery and that the mother misrepresented to the motility specialist that Dr. Pickens had decided not to proceed with the motility study. Dr. Jenny joined in the opinion that the G-J split surgery was unnecessary and performed based on the mother's false reports. The medical records submitted at trial do not support these doctors' opinions or the conclusion that the G-J split surgery was the result of medical abuse by the mother. Exhibits 239, 241, 242 demonstrate that Ellen was having ongoing problems with her J-tube coiling in her stomach which caused her pain and required ongoing procedures and medical intervention to correct the problems. The G-J split surgery was considered by the doctors as a way to address this problem. Exhibit 229.
- 2.86 Exhibit 231 is a medical record drafted by Dr. Pickens which states that he referred Ellen to the Children's Hospital "*to discuss an antroduodenal manometry and motility study.*" Mother testified that her understanding was that they were referred to "*discuss*" the options and not to have a study done. Dr. Ambartsumyan's medical records does not suggest that

Ellen was scheduled for a “study”. Dr. Picken’s medical records admitted as Exhibit 232 state that he would await recommendations from Dr. Ambartsumyan at Children’s Hospital and would speak with Dr. Lao and the family about “options.”

- 2.87 Dr. Ambartsumyan’s medical note in Exhibit 229 states that she not only obtained Ellen’s medical history from the mother, but she also reviewed Ellen’s “*radiographs, labs and chart notes ...in great detail.*” Dr. Ambartsumyan’s note does not state anywhere that the mother reported that Dr. Pickens or any other doctor had already decided to proceed with the G-J split surgery and/or that the motility study was unnecessary.
- 2.88 Dr. Ambartsumyan’s note does not specifically recommend a motility study. Instead she states that “*if she fails primary J feeds and continues to be TPN dependent, then we would recommend antroduodenal study to assess the neuromuscular integrity of the intestine for consideration of a diverting ostomy.*” Dr. Ambartsumyan did not oppose a G-J split surgery for Ellen.
- 2.89 Dr. Picken’s medical note in Exhibit 233 demonstrates that he communicated with Dr. Lao and received phone messages from Dr. Ambartsumyan before the decision to proceed with the G-J split surgery. Dr. Lao’s note in Exhibit 234 demonstrates that he conferred “*extensively*” with Dr. Pickens and they both agreed to the procedure.
- 2.90 There is no indication in any of the records from Dr. Pickens, Dr. Ambartsumyan or Dr. Lao that the decision to proceed with the G-J split surgery was the result of false or misleading information provided by the mother. To the contrary the medical records establish that the doctors had significant communications with each other prior to the surgery, that the surgery was recommended by the doctors according to their expertise and sound medical judgment, and that Megan and Andy Carter’s decision to proceed with the surgery was made in order to follow the recommendations of the doctors. Ellen Carter had the G- J tube split for approximately one and a half years. There were no medical records or other evidence submitted to show that the medical care providers who recommended the surgery ever changed their minds or believed that their recommendations were due to false or exaggerated information provided by the mother.
- 2.91 Dr. Pickens was the treating doctor for the Carter children for the majority of the time. The records from Dr. Pickens show that he was closely involved with Ellen’s digestive issues and provided treatment for her. The record also shows that the mother followed Dr. Pickens and other medical providers’ recommendations. Dr. Woods’ opinion that somehow the mother by false reports tricked Dr. Pickens into proceeding with the J-G split surgery is not plausible. If needed, Dr. Pickens could ask Dr. Ambartsumyan for a written report, could consult with Dr. Ambartsumyan again or send Ellen back for more tests. There was no evidence submitted to claim that the mother would not have followed the recommendation of taking Ellen for more tests. In fact, the record clearly shows that the mother followed through with all of Ellen’s medical providers’ recommendations. There is no credible evidence submitted to show that the doctors who are specialists in their fields made the decision to go forward with a procedure on Ellen only based on the mother’s

reports and without medically sound reasons. Dr. Pickens and Dr. Lao jointly decided to go forward with the procedure. There is no evidence to establish that the G-J split surgery was the result of medical abuse perpetrated by the mother.

- 2.92 The decision to begin TPN nutrition through a central line was likewise not based on false or misleading reports of Ellen's condition by the mother. The medical record in Exhibit 313 demonstrates that the decision to begin TPN was made by Dr. Desai because of concerns about Ellen's feeding intolerance, motility and issues with Ileus (food not moving through her GI tract property).
- 2.93 Dr. Woods and Dr. Jenny testified that Ellen did not suffer from a seizure disorder. They testified that the mother provided false or exaggerated reports of seizures which resulted in unnecessary care. The evidence presented established that Ellen had legitimate seizures and medical conditions causing seizures and that others beside the mother had observed her seizures.
- 2.94 Dr. Nilsen testified that she witnessed a seizure in the hospital and witnessed another seizure-like event. Dr. Nilsen confirmed on the stand that what she observed was certainly a seizure. Nurses and other doctors reported their observations in Exhibits 213, 308, and 315 of Ellen suffering from seizures or seizure-like symptoms. The mother presented videos in Exhibit 319 during her testimony of Ellen suffering from a seizures or seizure-like symptoms at home and at the hospital. Ruth Carter testified that since returning from the hospital, there have been times that Ellen becomes unresponsive for short periods. Records were also presented from Ellen's neurologist, Dr. Al Mateen, in Exhibit 5 that he had diagnosed Ellen with epilepsy in September 2015 and decided to prescribe Keppra for Ellen to control her symptoms. Dr. Al Mateen noted in his notes that *"3 days ago, grandmother noted blank stare for about 20 seconds. She then rested for the next few hours."* He also notes that: *"A normal EEG does not exclude epilepsy."* Even after the removal of the mother from Ellen's care, the diagnosis of epilepsy remains present in Ellen's medical records. There was testimony that one of the seizure medications has been discontinued, but Dr. Al Mateen has continued Ellen on anti-seizure medication.
- 2.95 Dr. Woods testified that Ellen did not suffer from aspiration. The medical records presented in Exhibits 228 and 237 demonstrate otherwise.
- 2.96 Dr. Woods testified that Ellen did not suffer from legitimate adrenal issues, but Exhibit 316 which is a report from Mary Bridge Pediatric Endocrinology Clinic dated 6/11/2018 states that Ellen has Cortisol deficiency and the report explains that: *"This means that her body is unable to process enough of the hormone needed to support her body functions in times of severe physical stress."*
- 2.97 Dr. Jenny testified that Ellen suffered from a high number of line infections, beyond the number she found common in a study of children with central lines. Dr. Jenny also testified that she did not determine the causes of Ellen's line infections and could not testify that they were caused by medical abuse. Dr. Boles testified that infections and blood clots are

extremely common in patients with symptoms similar to Ellen's and that Ellen has had less infections than most of the patients he has cared for with similar medical issues. Dr. Shwartz, Ellen's infectious disease doctor, indicated in an email to CPS investigator, Narissa Shirley, on May 3, 2018 that he had been treating Ellen for infections and had "no concerns." Exhibit 311.

- 2.98 Dr. Woods and Dr. Jenny testified that the mother severely restricted Ellen's activity level. Dr. Woods testified that the mother kept Ellen bedridden. Dr. Jenny testified that Ellen's activity was restricted to the point that she had to use a wheelchair or walker. The Court does not find the doctors' testimony on this point accurate as the records and testimony of other witnesses contradicts their opinion. There was no evidence submitted that Ellen was ever in a wheel chair. Dr. Nilsen and Nurse Graag testified that Ellen was quite active in the hospital in April and May 2018 after her health began to improve. The Court notes that when Ellen was admitted into the hospital, she was critically ill, hooked up to machines and monitors and as such, she would not have been active. But the record is clear that after her health improved she was active and would mostly be in the activity/ play room or playing on the floor in her room. Mother testified that they put down a pad for her to play. Megan Carter, Diedre Bagocki, Dianne Hanratty Penoyer, John Gese and Ruth Carter all testified that Ellen was quite an active child who participated in ballet and liked to play with her brother and friends in the neighborhood. None of these witnesses ever saw the mother restrict Ellen's activity level in any inappropriate way. Videos of Ellen were also admitted in Exhibit 277 showing Ellen to be a quite active and happy child.
- 2.99 Ellen Carter was cared for by many doctors over a five-year period before the Dependency Petition in this case was filed, including Dr. Al Mateen, neurologist; Dr. Pickens, gastroenterologist; Dr. Murphy, pulmonologist; Dr. Schwartz, infection disease; Dr. Chang, hematologist; Dr. Nilsen, hospitalist; Dr. McCabe, hospitalist; Dr. Lee, pediatrician; and Dr. Kett, complex care physician. None of the medical records admitted at trial from any of these doctors raised the concern of medical abuse by Megan Carter prior to Ellen's May 2018. In fact, the medical records establish that Megan Carter cooperated with Ellen's medical care and followed doctors' recommendations. Dr. Nilsen and Nurse Gragg testified that they had significant contacts with Ellen and Megan Carter prior to May 2018 and that they never had any concern that the mother was engaging in medical abuse. Dr. McCabe in his notes commented that the mother was very cooperative and helpful in providing care for Ellen and that the mother did not have any agenda of her own. Exhibit 315.
- 2.72 Until May 2018 when Nurse Gragg, Dr. Nilsen, Dr. Woods and Detective Muse watched the videos admitted as Exhibits 162 and 163 and erroneously concluded that Megan Carter had disposed of Lovenox instead of administering it to Ellen, there were no medical records from providers with any concerns of medical abuse by the mother (*see Findings regarding social worker report, supra*). Medical abuse is only mentioned after the videos were viewed and misinterpreted. Dr. Woods' claims that doctors or other health care providers raised concerns about medical abuse by the mother during a meeting which was held in

May 2018 is uncorroborated by any medical records or statements from those doctors or providers themselves.

- 2.73 Since the one referral made by Dr. Lee in 2014, it is significant that Ellen's many medical care providers did not make any mandatory referrals to law enforcement or CPS regarding concerns of abuse or neglect about the mother's Care of Ellen (*see Findings regarding social worker report, supra*). According to the policy and protocols of MultiCare and Mary Bridge Children's Hospital in Exhibit 325, any Mary Bridge Children's Hospital staff member who has "*reasonable cause to believe a child suffered abuse or neglect...will immediately report the abuse or neglect as required by law. The report must be made at the first opportunity, but in no case longer than 48 hours.*" While the policy and protocols also require staff to report concerns of abuse or neglect to the CAID of which Dr. Woods is a member, the policy does not provide that reporting concerns of abuse or neglect to CAID is a substitute for or satisfies the requirement of reporting to law enforcement and CPS. The policy requires staff members to report concerns of abuse or neglect to law enforcement or CPS and to CAID, *not one or the other*. The policy also requires staff to document concerns of abuse or neglect themselves.
- 2.74 The CASA testified that she reviewed the medical records provided in discovery in this case and saw "*inconsistencies*" between the records and the reports of the mother. In the over 10,000 pages of discovery which were discussed at trial, the only evidence in the medical records which raised a concern about the mother's reports appears in Exhibit 427. *See Findings 2.9 and 2.10 above*. No evidence of other concerns about Megan Carter's care of Spencer or Ellen were raised by these or other doctors until May 2018.
- 2.75 DCYF also submitted Exhibits 13, 168 and 169 into evidence to document an incident which it and the CASA claimed was evidence of false or exaggerated reports by the mother about Ellen's medical condition and to show mother's inability to provide adequate care for Ellen. Dr. Jenny supported these claims about these exhibits. These exhibits demonstrate that on October 4, 2013, mother observed Ellen "*have a blood-tinged regurgitation/spit-up associated with cough.*" She contacted Dr. Lee about the incident and agreed to take Ellen to the Swedish Hospital Emergency Room after which she was admitted to the hospital. In the hospital it was determined that the mother was mixing Ellen's formula incorrectly and the nursing staff were able to get Ellen to feed without trouble.
- 2.78 The Court does not find Exhibits 13, 168 or 169 are evidence of medical abuse. First, there is no evidence that the mother provided a false or exaggerated report about Ellen's symptoms. At the time, Ellen was 5 months old and most of her life had been in the hospital. There is no dispute that Ellen was born extremely pre-mature and that she had complicated and medically complex issues. There is a long, documented history in evidence about Ellen's feeding and gastrointestinal issues for which she continues to receive treatment. While the nursing staff did not observe the regurgitation or spitting up which the mother had reported happened earlier, that does not mean that it had not happened as mother described. It is plausible that the mother would get worried when her medically and

physically fragile baby who was recently released from the hospital, spits up and there is a tinge of blood. Doing nothing in this situation and not having the baby checked by the medical personnel would in such case be irresponsible parenting. The mother appropriately reported the issue to Ellen's doctor and followed the doctor's instructions. While the mother admitted that she had been mixing the formula incorrectly because she was either mistaken about it or given the wrong instructions, she also testified that when she was informed of the mistake, she corrected it. Considering that at that time Ellen had recently been released from the hospital, that mother was new to feeding Ellen outside of the hospital setting, that Ellen had feeding issues and many other health concerns, it is plausible that the mother got the mixture ratio wrong. There is no evidence that the mother did not feed the baby – only that the ratio was wrong. At any event, it is reasonable for the mother of such fragile new born to become worried after seeing a tinge of blood when the baby spit-up. There is no reason to believe that the mother was intentionally mixing Ellen's formula incorrectly. The Feeding Evaluation in Exhibit 285 was performed three weeks before the hospital admission discussed in Exhibits 168 and 169 and documented legitimate feeding issues. This Court finds that Exhibits 13, 168 and 169 do not corroborate medical abuse by the mother.

- 2.79 DCYF and CASA argue that medical abuse is further established by Ellen's improved medical condition since the mother was removed as her caretaker. This conclusion was supported by the testimony of Dr. Jenny and Dr. Woods. The Court is not persuaded by these arguments and the doctors' testimony.
- 2.80 This Court finds that while Ellen suffered from a number of significant medical conditions and had a number of hospitalizations prior to the removal of the mother as her caretaker, her condition was not as described by Dr. Jenny or Dr. Woods. Ellen was not starved or intentionally malnourished by the mother. The evidence established that Ellen had significant feeding and gastrointestinal issues since birth which affected her oral intake of food and ability to absorb calories and grow. The Court heard testimony from the family members that that food was always available to Ellen, but that she did not often eat much. Ellen's physical activity was also not inappropriately restricted by the mother. Dr. Nilsen, Nurse Gragg and the mother testified that when Ellen felt well enough, she was often seen in the playroom and had a lot of energy. Outside of the hospital, the mother arranged for Ellen to participate in ballet and was often active playing with friends. Some of Ellen's activities were captured in the videos presented in Exhibit 277. The portrayal of Ellen as constantly sick or sickly is not accurate.
- 2.81 Since release from the hospital Ellen continues to suffer from gastrointestinal issues, seizure-like symptoms, adrenal issues, developmental delays and has chronic kidney disease. She continues to receive the majority of her nutrition through a G-Tube which remains installed in her abdomen, continues to take anti-seizure medication and cortisol for adrenal issues, and receives occupational, physical and speech therapy to address her developmental, feeding and speech issues. Dr. Lee testified that Ellen has barely gained weight in the last year since the removal of Megan Carter from her care and the growth chart admitted in exhibit 172 confirms this. The Court finds that Ellen's physical condition

has improved since May 2018 when she was released from the hospital, but that significant medical conditions and challenges remain. Dr. Lee testified also that as Ellen grows, she may out-grow many of her medical conditions.

- 2.82 The Court finds that the improvement in Ellen's medical condition, since her release from the hospital in May 2018, was not due to the removal of the mother as her caretaker. The evidence submitted in trial and the testimony of the witnesses show that Ellen had been critically ill and spent two months (March – May) in the hospital including a few weeks in the PICU. When she moved out of the PICU, the feeding directive from the doctors was that she was to receive food through her J-tube and was only allowed to eat ice orally. Exhibit 218. The fact that Ellen gained weight after her release from the hospital was due, in part, to her poor condition after being seriously ill and hospitalized for two months as well as the restrictions placed on her oral feeding by the hospital staff.
- 2.83 Before discharge, Ellen's central line was also removed. The Court heard Dr. Boles' testimony that the primary reason for the improvement in Ellen's general health condition after her release from the hospital was the removal of her central line which was the cause of a number of infections and hospitalizations. Dr. Boles testified that Ellen's illnesses from infections due to her central line impacted Ellen's ability to eat and grow. Dr. Lee testified that children like Ellen can age-out of some of their medical conditions. Also, a number of changes to Ellen's feeding protocols were made at the time of her release from the hospital, including working with a feeding therapist, which has had a positive impact. Both Dr. Lee and Dr. Boles testified that Ellen's progress is not evidence of medical abuse committed by the mother. This Court finds that the progress Ellen has made since her release from the hospital in May 2018 was due to a number of independent factors and not due to the removal of the mother from caring for Ellen.
- 2.84 Dr. Boles, Dr. Woods and Dr. Jenny were all in agreement that Ellen was "overmedicalized" at the time she was admitted to the hospital in March 2018. The Court finds that the overmedicalization was not the fault of Megan Carter or the result of medical abuse. Likewise, this Court finds that the successful removal of some of Ellen's medications and medical interventions since mother's removal from Ellen's care is not proof of medical abuse. No evidence was submitted at trial that the mother ever requested particular interventions for Ellen or tried to substitute her judgment or opinions for those of Ellen's doctors. There was no proof submitted at trial that the doctors who ordered Ellen's medications and medical interventions acted negligently, committed malpractice, or were improperly influenced by the mother. This Court finds that the doctors who made their decisions about how to treat Ellen did so based on their expertise and sound medical judgment. No evidence was presented to believe otherwise. These medical experts did not make medical decision on a critically ill child with medical complications based on what Megan Carter wanted. In fact, Megan Carter never suggested a specific course of treatment, she just followed the recommended course. The evidence established that the medical interventions were recommended by the doctors and that Megan and Andy Carter agreed to them because they were recommended. The evidence established that the mother followed the recommendation of the doctors.

- 2.85 There was a plan for Ellen to have a “well-admission” to evaluate her condition when she was not sick; to which the mother agreed, but this plan was interrupted by Ellen’s admission to the hospital in March 2018. There was also a plan for Ellen to be evaluated by the Undiagnosed Disease Network, but that plan was also not followed through due to Ellen’s hospital admission. In May 2018, after the mother was removed from Ellen’s care, the medical providers recommended to de-escalate Ellen’s medications or interventions. The Court does not find that the medical abuse by the mother was the reason for Ellen’s medicines and interventions at the time of her admission to the hospital in March 2018. This Court finds that Megan Carter merely followed the recommendations of Ellen’s doctors. Likewise, the failure to de-escalate Ellen’s medical care prior to her admission to the hospital in March 2018 was because no such recommendations were made by the doctors.
- 2.86 The Court finds Megan Carter’s testimony to be credible. She answered all questions asked of her and had a strong memory of events. She testified that she did not provide false or exaggerated information to doctors about Ellen’s symptom and did not have any agenda in seeking medical care for Ellen over the years. She testified that she was not a victim of medical child abuse herself and did not receive any pleasure from Ellen’s medical conditions. She testified that she followed the recommendations of the doctors and did nothing to harm Ellen.
- 2.87 Dr. Woods’ theory that the mother has falsely caused all the medical providers to act, that she has wasted medicine, that she has benefitted from secondary gain, that she has abused the children are the core of the DCYF’s allegations against the mother. As attractive as it may be, there needs to be more than just a theory to prove these allegations by the preponderance of the evidence. There were none in this case. Dr. Woods in her testimony was more defensive about her opinion than providing factual basis to support her accusations against the mother. The record did not support Dr. Woods claims that there were multiple providers with concerns, not only she did not document these independent concerns, she did not name the multiple providers who she claimed had concerns independent of and previous to her accusations. She did not tell the mother about “*multiple entities*” with concerns and did not testify about them. The only conclusion that the Court can reach is that there were none (with the exception of the social worker’s report), that after receiving the maternal grandfather’s letter and seeing a child with multiple and complex medical issues, Dr. Woods became suspicious of the mother and her suspicion caused the removal of the mother from the lives of two medically and physically fragile children. Ellen and spencer are lucky that they have the support of their paternal grandparents and their father.
- 2.100 Dr. Jenny who has extensive experience, was factually mistaken at times and at other times did not support her opinion with the underlying facts. Her testimony showed that in her review of the record, she basically rubber-stamped Dr. Woods’ findings without a critical review of her findings. For example, both doctors claimed that the mother was a victim of



child medical abuse. Neither one ever investigated this claim. There was no evidence to prove this claim, but they used it as a factor against the mother.

- 2.101 Ellen and Spencer are children who were both born pre-mature and with complex medical issues. While Spencer's medical issues are somewhat less complicated than his sister's, Ellen's medical issues continue to be numerous. The children have loving parents and grandparents. They have a close extended family and as such they are lucky children. As a parent of a medically fragile child, Megan Carter has done an excellent job, she has been thoughtful, caring, attentive to their needs and vigilant with their health issues. She has kept consistency in their medical providers, she has followed every medical advice and recommendation and has put many hours in providing, at times complex medical care that her children needed. She has made the children her priority. She has made activities available to Ellen such as ballet that would not normally be available to a child in her condition. The family have gone through hardship because of the allegations brought against them and at the same time they have stayed true to their commitment to their children.
- 2.102 This Court finds that the facts presented at trial do not establish by a preponderance of the evidence that Megan Carter committed medical abuse or any other abuse or neglect against Ellen Carter or Spencer Carter.
- 2.103 This Court finds that Megan Carter is able to provide adequate care for Spencer Carter and Ellen Carter and that neither of the children are dependent children.

### **III. Conclusions of Law**

This court has jurisdiction over the mother and these children.

- 3.1 The mother was given timely and proper notice of these proceedings and attended every day of the dependency fact finding trial.
- 3.2 After reviewing the testimony and exhibits admitted at trial, this Court finds that DCYF has not proven by a preponderance of the evidence that Megan Carter abused or neglected either of her children, Spencer Carter and Ellen Carter.
- 3.3 DCYF did not prove by a preponderance of the evidence that Megan Carter committed medical abuse or neglect against Spencer or Ellen Carter as alleged in the petition and as otherwise alleged by its medical experts, Dr. Woods and Dr. Jenny.
- 3.4 DCYF did not prove by a preponderance of the evidence at trial that Megan Carter is unable to provide adequate care for her children, Spencer and Ellen Carter.
- 3.5 Spencer and Ellen Carter are not dependent children according to RCW 13.34.030(6)(b) or (c).

#### **IV. Order**

- 4.1 The children, Spencer Carter and Ellen Carter, are not dependent pursuant to RCW 13.34.030(6)(b) and (c) because Megan Carter is available and can provide adequate care for them.
- 4.2 The Dependency Petition alleging that Megan Carter is unable to provide adequate care for Spencer and Ellen Carter is hereby dismissed.

***DATED: 06/21/2019***



**Judge Susan Amini**